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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,818	12/31/2001	Robert L. Popp	KCC 4771	9058

321 7590 05/10/2004

SENNIGER POWERS LEAVITT AND ROEDEL  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 05/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/038,818

**Applicant(s)**

POPP ET AL.

**Examiner**

Karin M. Reichle

**Art Unit**

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3 and 19-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12-31-01 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. It is noted that the amendments to page 5 and the abstract did not comply with 37 CFR 1.121 in that such did not underline the language added nor strike through the language deleted. The Examiner has made the necessary red ink changes to bring these amendments into compliance. Any further response should comply with 37 CFR 1.121 effective 7-30-03.

### ***Drawings***

2. The drawings were received on 2-20-04. These drawings are not accepted by the Examiner. Figure 7 does not show a gathered nonwoven, see claim 3 and the portions of the specification cited as support by Applicant. Also, the changes requested with respect to Figure 6 were not made nor traversed.

3. The drawings are objected to because in Figures 1 and 4, the line from 42 does not extend all the way to the structure it denotes. In Figure 2, the upper left 66 does not denote the proper structure. In Figure 3, the rightmost 46 should clearly be shown as the numeral 46. In Figure 6, the text should be avoided, i.e. numbers used instead and the text and numbers explained in the textual description of the invention. Where is Figure 7? A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claim 3, i.e. loop component having gathers formed by the nonwoven component, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### ***Description***

5. The abstract of the disclosure is objected to because legal terminology, i.e. "said", should be avoided. Correction is required. See MPEP § 608.01(b).

6. The disclosure is objected to because of the following informalities: what is 78 in Figure 3 (see discussion in paragraph 2 supra)? Also, in the amendment to page 23, line 8, lines 3 and 4 thereof would be in better form if "(designated...7)" were moved from line 3 to line 4 after "face".

Appropriate correction is required.

7. The amendment filed 2-20-04 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the amendment to page 27, line 2, lines 25-31 thereof, i.e. where is the support as originally filed for the changes made to the recitation of the elastomeric and nonelastomeric materials?

Art Unit: 3761

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

8. Claims 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 21-23 are considered dependent claims. It is unclear whether a subcombination of a fastening system, i.e. "The ...system", as set forth in the preambles of claims 21-23 (also note lines 3 and 9 of claim 19, i.e. "mountable") or the combination of a fastening system and garment as set forth in the claim body of claims 21-23 is being claimed.

***Claim Language Interpretation***

9. "Neck-stretched" is defined as set forth on page 9, lines 1-3. The terminology "attached" is interpreted in view of the definition bridging pages 5-6, i.e. could be direct or indirect attachment. Applicant has defined "cross machine direction" and, thereby, "machine direction" in claims in claims 20 and 3 with respect to the directions of the loop component during manufacture. The terminology "prestrained" has not been specifically defined by the Applicant and therefore will be given its ordinary, i.e. dictionary, definition, i.e. "prestrained" is interpreted in claim 24 as being pulled, drawn, stretched or tensioned before attachment to the elastic substrate.

***Claim Rejections - 35 USC § 102***

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by Weirich et al '460.

See definition of “prestrained” in paragraph 9, supra, Figures 4 and 6-8, i.e. the mechanical fastening system is 72, the article is 50, the loop component is 22, the hook component is 24, the loop component 22 is a multidirection elastically stretchable material, see col. 14, lines 59-62, col. 18, lines 35-49 (and thereby Freeland et al '120, at col. 17, lines 53-56), col. 3, lines 59-61, Figures 1-2 and col. 5, line 65-col. 6, line 40, col. 11, lines 11, lines 30-33, i.e. the loop component includes a pretensioned, i.e. prestrained, loop material 30 directly attached to an elastic substrate 34 which is stretchable in at least two directions, and see col. 8, lines 27-64 and col. 13, line 63-col. 14, line 20, i.e. it is the Examiner's position that the language of the whereby clause is explicitly taught. In any case the whereby clause recites properties, functions or capabilities of the claimed structure. As discussed supra, the '460 reference includes all the claimed structure. Therefore there is sufficient factual evidence for one to conclude that the claimed properties, functions and capabilities would also be inherent in the same structure of the '460 device. See MPEP 2112.01.

12. Claims 19 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Hetzler '136.

See definitions in paragraph 9, supra, col. 10, line 65-col. 12, line 2 and Figure 3, i.e. teaches a mechanical fastening system 88 for an article 80 with a loop fastening component and a

Art Unit: 3761

hook component, see elements 10 and 30 in Figure 2, col. 7, lines 20-36, col. 9, lines 54-56, col. 8, lines 34-39 and col. 9, lines 1-3 and 26-36, i.e. the loop component is a neck stretched, i.e. prestrained, nonwoven material directly attached to an elastic substrate and the component and elastic are capable of stretching in multiple directions, i.e. the CD and MD directions. The remarks with regard to properties, functions and capabilities in the whereby clause set forth in paragraph 11 are reiterated here with regard to the '136 reference.

***Claim Rejections - 35 USC § 102/103***

13. Claims 3, and 20-23 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hetzler et al '136.

With regard to claim 3, this claim is a product by process claims. See MPEP 2113. It is noted that it is the structure of the end product not the process of making the end product which determines patentability, i.e. claims would be unpatentable even if the prior art did not teach the same process of making as long as the prior art taught the same structure as that of the end product of such claimed process. Additionally, and also with respect to claim 20, see col. 9, lines 26-36 and col. 9, lines 54-56. It is the Examiner's first position that the '136 reference teaches stretching the nonwoven material in a machine direction of the loop component so as to neck down in the cross machine direction of the loop component because it teaches the support layer of the laminate being a necked material which is extensible in the cross machine direction of the laminate and that the '136 reference teaches attaching the nonwoven material to the elastic substrate stretched in the machine direction so that the loop component gathers in the machine direction because it teaches the film can be stretched during bonding to such a support layer and

Art Unit: 3761

that such results in machine direction stretch. In any case, i.e. the Examiner's second position, to make a support layer of necked material which layer is also extensible in the cross machine direction of the laminate as taught by '136 by stretching the support layer in the machine direction so as to neck down in the cross direction of the laminate, i.e. loop component, if not already, and to make the elastic film layer stretched in the machine direction and attached to the necked support layer when stretched as taught by '136 so as to gather the combination in the machine direction of the laminate, i.e. loop component, if not already, would be obvious to one of ordinary skill in the art because it is well known that stretching a neckable material in the machine direction creates neck down, i.e. extensibility, in the cross machine direction of the necked material and that stretching an elastic layer in a machine direction and attaching it to another layer while it is stretched will cause gathering of the combination in the machine direction so as to make the laminate extensible in the machine direction and the desire of '136 to have a necked support layer which is also extensible in the cross machine direction and an elastic layer attached to the support layer in the stretched condition to create a laminate which laminate is also stretchable in the machine direction.

With regard to claims 21-23, see discussion of claims 19 and 24 and also col. 10, line 65-col. 12, line 12 and Figure 3, i.e. '136 teaches an article for personal wear having a liquid permeable liner or inner layer, an outer layer and an absorbent layer in combination with fastening means 88 which are mechanical hook and loop type fasteners in which the loop component as discussed supra serves as the loop portion of the fastener. The fastening means 88, i.e. a tab, which can be the loop component appears, see Figure 3, to be formed separate from but attached, i.e. directly or indirectly, to the outer layer of the article at one end for attachment to



Art Unit: 3761

the opposite end, i.e. the hook component is attached at the opposite end. In any case, even if such is not shown, it is well known to arrange the loop component separate but attached as claimed and the hook component as claimed on an article of personal wear for fastening the article on the wearer. Therefore, to arrange the components of the fastening system as claimed would be obvious to one of ordinary skill in the art in view of the recognition that such is well known for permitting an article to be fastened to a wearer and the desire of such by Hetzler '136.

***Claim Rejections - 35 USC § 103***

14. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

15. Claims 3 and 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morman et al '028, and thereby Morman '781 and '662, in view of Hetzler '136.

With regard to claims 19, 24, 20 and 3, see col. 1, lines 5-7, col. 2, lines 6-8, and 10-13, col. 4, lines 11-13, col. 8, lines 27-35, col. 9, lines 58-66 and col. 11, line 65-col.12, line 16, and thereby Morman '662 at col. 11, line 40-col. 12, line 34 and Morman '781 at col. 13, line 41- col. 14, line 61 (compare to page 29, lines 28-30, page 32, lines 7-15 and page 36, line 20-page 37, line 25 of the instant specification), i.e. a neck stretched or prestrained material 12 is directly attached to an elastic substrate which is stretchable in two directions to form a laminate which is capable of elastic stretch in two directions and the material 12 is necked in the cross direction of the laminate and is attached to the elastic substrate as claimed in claim 3. The laminate so formed can be used as a breathable elastic film and nonwoven laminate outer cover of a diaper. Therefore, the Morman '028 device includes all the claimed structure except for such laminate

Art Unit: 3761

being used as a loop component of a mechanical fastening system for an article which system also includes a hook component. However, Hetzler '136 also teaches a breathable, elastic film and nonwoven laminate can not only be used as the outer cover of a diaper but also as a loop component of a hook and loop mechanical fastener system in a diaper, see col. 10, line 65-col. 12, line 2 as well as the other portions of the '136 reference cited supra. To use the breathable, elastic film and nonwoven laminate to form a loop component of a mechanical fastening system as claimed would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Hetzler. With regard to the whereby clauses of claims 19 and 24, if not already taught by the prior art combination, the prior art combination would necessarily and inevitably possess the same functions, capabilities and properties because it includes the same materials processed in the same manner as the claimed invention, see cited portions of references and the instant application supra. In regard to claims 21-23, Applicant claims specifics of the personal wear article attached to the fastening system. See the discussion of these claims with respect to Hetzler '136 supra, i.e. the structure of the article used with the mechanical fastening system is either also taught by Hetzler or well known.

### ***Response to Arguments***

16. Applicant's remarks with regard to matters of form have been considered but are either deemed moot in that such issue has not been reraised or is deemed not persuasive for the reasons set forth supra. Applicant's remarks with regard to Morman'600 are deemed moot in that that reference has not been reapplied as a 102 reference. Applicant's remarks with regard to Hetzler and Weirich have been considered but are deemed narrower than the claim language, see

Art Unit: 3761

definition of “prestrained” supra, and narrower than the teachings of the prior art references, see cited portions supra, i.e. the Weirich reference teaches a “prestrained” web and Hetzler does teach a film and laminate which are elastic, i.e. not all embodiments taught by Hetzler are inelastic.

### ***Conclusion***

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

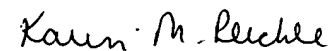
The amendments to claim 3 as well as new claims 19-24 necessitated any new grounds of rejection.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

Art Unit: 3761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
May 4, 2004